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No. 364

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

Local Lodge 2040, International Association of Machinists, AFL-CIO, International Association of Machinists, AFL-CIO, Robert H. Brown, Hubert Adams, Lemard Appel, James Alderson, Hick-

(Names of Petitioners Continued on Inside Cover)

Petitioners,

v.

Servel, Inc., a Corporation, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement	4
Reasons for Granting the Writ	8
Conclusion	18
Appendix	1A

AUTHORITIES CITED.

Cases.

American Federation of Labor v. Western Union Telegraph Co. (6 Cir., 1950), 179 F. 2d 535 ..... 11, 12

Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp. (1954), 348 U. S. 437.. 8

Carroll v. Morrison Hotel Corp. (7 Cir., 1945), 149 F. 2d 404, 406 9

Chicago & Northwestern R. R. Co. v. Chicago Packaged Fuel Co. (7 Cir., 1950), 183 F. 2d 630 9

Federal Trade Commission v. National Lead Co. (1957), 352 U. S. 419, 427 15

Goodall-Sanford, Inc., v. United Textile Workers of America (1957), 353 U. S. 550 9

Grannis v. Ordean (1914), 234 U. S. 385, 394 15

Hansberry v. Lee (1940), 311 U. S. 32..... 16

In re Public Ledger (3 Cir., 1947), 161 F. 2d 762, 767-769 14

In re Wil-low Cafeterias, Inc. (2 Cir., 1940), 111 F. 2d 429 14

Kollman v. McGregor (1949), 240 Iowa 1331, 39 N. W. 2d 302 13

Morgan v. United States (1938), 304 U. S. 1, 18 15

Mullane v. Central Hanover Bank & Trust Co. (1950), 339 U. S. 306, 314 15

Parker v. Borock (N. Y. Ct. of App. 1959), 156 N. E. 2d 297, 300, 36 Labor Cases, Par. 65,159, at p. 65,592 14

Prudential Insurance Company of America v. Insurance Agents' International Union (D. C. S. D. N. Y. 1959), 169 F. Supp. 534 14

Textile Workers Union of America v. Arista Mills Co. (4 Cir., 1951), 193 F. 2d 529 10

Textile Workers Union of America v. Cone Mills Corp. (D. C. N. C. 1958), 166 F. Supp. 654 11

Textile Workers Union of America v. Cone Mills Corp. (4 Cir., 1959), ... F. 2d ..., 37 CCH Labor Cases, Par. 65,587 11

Textile Workers Union of America v. Lincoln Mills (1957), 353 U. S. 448 ..... 8, 9, 10, 11, 12, 13

United States v. Munro-VanHelms Co. (5 Cir., 1957), 243 F. 2d 10, 13 14

United Steel Workers of America v. Pullman-Standard Car Mfg. Co. (3 Cir., 1957), 241 F. 2d 547 12

Statutes.

28 U. S. C. § 1254 (1) 2

Section 301 (a) of the Labor Management Relations Act 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 15

Constitution.

Fifth Amendment 3, 16

Miscellaneous.

Note 70 Harvard Law Review 490 13
S. Rep. No. 1734, 84th Cong. 2nd Session, 11, 13 (1956) 13
Cox, Rights Under a Labor Agreement, 69 Harv. L. Rev. 601, 639 14

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Robert H. Brown, Hubert Adams, Lemard Appel, James Alderson, Hickman Allgood, Earl Aubrey, Walter Bagby, Dewey Baize, Arthur D. Baker, B. H. Bales, Nolan Ballard, Orville Bates, Raymond R. Bates, Leroy Becker, Charles C. Bell, Victor Bethe, Jewell O. Bitts, Harry F. Boyils, Lowell Brammer, George Brown, William H. Brown, Garland Bruce, Raymond D. Bruner, Arthur H. Buckman, Earlene Burchfield, Beatrice Butze, Wesley B. Cary, Lloyd L. Cecil, Arthur B. Chipps, G. H. Clark, Oron E. Clark, Arlie Colglazier, Sydnor Collins, Ray Crowder, Freeman Crowley, Paul Dillman, Jessie Dossett, John W. Dossett, Harold W. Dunlevy, Truman Dunville, Herman P. Durbin, Odd Durham, Mildred N. Duvall, Aaron Elder, Roy Ellis, H. Feagly, Ermal C. France, R. Franklin, J. B. Franey, Chas. T. Fridy, Edgar Frohbieter, Willie Fuller, Kenneth E. Gainer, Willie Garrett, Roland B. Gentry, Fred Gerling, Emmett A. Gibson, Simon V. Gilles, Roxford L. Gillison, O. D. Ginger, Alfred Goldbach, Earl Goodwin, Adam Grabert, Thomas M. Gregory, Ralph Griffin, Raymond Griffin, Joseph Hagen, Abbie C. Hampton, Andrew Harker, H. C. Hartig, Earl E. Hayden, Sr., Harland D. Hayes, Herman E. Henry, Joseph L. Herr, Barney Herron, Herman Hester, Marvin R. Hill, George Hilakos, Arthur Hilgeman, John Hriber, John R. Hudson, Gilbert Jenkins, Kelly T. Jenkins, Earl L. Johnson, Herbert Ray Johnson, Wesley Johnson, George W. Jordan, Albert C. Kaiser, Delbert Kays, Benjamin Kemper, Alfred B. Kibby, Carl H. Kevekordes, John A. Knaebel, Joe Knapke, Archie Knerr, Edward J. Laine, Theodore Legrande, Jack Lemaire, Monroe Lewis, J. H. Longley, Herbert Lansden, Leonard M. Lindo, Roy H. Lovelace, Herman Lovelace, Raymond McCown, Claude McKeehan, Joseph G. Mackey, Charles Manning, Carl Marshall, Earl Martin, Lemuel Martin, Joseph M. Meier, Frank B. Meyer, Charles C. Miller, Chas. G. Miller, Claude M. Miller, Harry G. Miller, John V. Miller, Paul B. Mills, John W. Money, Ina Mae Moore, Thomas Moore, X. W. Muckenstorm, Jesse E. Myers, Loren P. Myrick, Albert Nix, Marshall E. Osborne, Gurlie Ourfield, Bernice U. Patterson, Henry Pemberton, Cecil Perigo, Alvin Phillips, William F. Pope, Delmar W. Powell, John Powers, Martin H. Pretz, Bailey Quirey, Manville Redding, William Reinitz, James C. Rice, Robert Riggle, M. W. Ross, Louis Rosso, Howard Rough, Erskin Rudd, William B. Rupe, Jesse Russell, Kelly Saltzman, Dewey Samples, Duvall Sandefur, E. B. Sanders, Edgar W. Schaefer, Joe Schapker, Mason Schofield, William Scheu, Edward Seibert, William Sherrod, Robert E. Siggers, William Smith, George G. Sodders, Robert Sollman, George Spaetti, August L. Spindler, Otis Staser, John L. Stanley, B. W. Stevens, Carl Stolz, Anthony P. Stratman, Earl Tenison, Loyd A. Thomas, Robert Tilley, Lorenzo Todd, Roy Topper, Esther Tron, John Trueller, Elmer Tummins, Russell Tuley, Jacob W. Turpin, Virgel Vanhooser, Lloyd C. Vanosdol, Gus Wagner, Thomas Walker, Jack T. Ward, Geo. L. White, Roscoe D. Williams, Byron Wilson, Earl Wilson, Muriel C. Wingert, Jess Wingfield, Lily E. Wise, Simon J. Wiseman, Frances Withrow, Robinnette Wood, Boyd Wright, Maston Wright, George W. Yancy, John J. Yunker, E. V. Zimmerman, Ernest Robertson, William Rothgeber,

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v.

Servel, Inc., a Corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

International Association of Machinists, AFL-CIO, its Local Lodge 2040, and the individual petitioners herein who are members of said labor unions and employees of the respondent, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on June 24, 1959.

OPINIONS BELOW.

The opinion of the Court of Appeals is not yet reported and is printed in Appendix A hereto, *infra*, pp. 1A-13A.

The decision, findings and judgment of the District Court (R. 368-376) are not reported, and appear in Appendix B hereto, *infra*, pp. 14A-21A.

JURISDICTION.

The judgment of the Court of Appeals was entered on June 24, 1959 (*infra*, p. 1A). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

1. Whether Section 301 (a) of the Labor Management Relations Act creates a federal substantive right, enforceable by a labor union, to protest and remedy an employer's wrongful discharge of its employees in violation of a collective bargaining agreement, where the agreement recognizes the union as the sole collective bargaining agent of the employees and specifically confers on the union the right to challenge the propriety of such discharges.

2. Whether, consistent with due process of law, and as a matter of federal substantive law under Section 301 (a), a union which is a party to a collective bargaining agreement and the sole collective bargaining agent of the employees, can be deprived of the right to be heard and to be a party to a suit in which a class judgment is rendered interpreting the collective bargaining agreement contrary to the union's contentions, which judgment is binding upon unnamed employees who are not parties.

3. Whether, under the federal substantive law to be applied under Section 301 (a), an employer can discharge its employees without cause in contravention of a specific provision of a collective bargaining agreement, and evade its obligation to pay earned fringe-wage benefits to its employees, by discontinuing its manufacturing operations, where the collective bargaining agreement is still in effect.

4. Whether there are any substantial contested issues of material facts with reference to the employee-plaintiffs' rights to insurance benefits which preclude summary judgment in the case at bar.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED.

The pertinent constitutional provision involved is as follows:

Constitution of the United States, Fifth Amendment:

> ". . . nor shall any person . . . be deprived of life, liberty or property, without due process of law; . . ."

The pertinent provision of the Labor Management Relations Act is Section 301 (a), 29 U. S. C., Section 185 (a), which provides:

> "Suits for violation of contracts between an employer and a labor organization representing em-

ployees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT.

This action was brought in the District Court by two labor unions, International Association of Machinists, AFL-CIO, and its Local Lodge 2040, hereinafter called the unions, petitioners herein, against respondent, Servel, Inc., an employer, for breach of a collective bargaining agreement, pursuant to Section 301 (a) of the Labor-Management Relations Act of 1947. The complaint sought a declaratory judgment declaring that a collective bargaining agreement which had been entered into between the unions and the respondent, Servel, Inc., was then in force and had been breached by Servel, Inc., and a mandatory injunction ordering the respondent, Servel, Inc., to allow its employees to exercise pension and insurance rights provided for in said agreement. Two hundred members of the unions, employees of Servel, Inc., joined as plaintiffs, to assert their individual claims for fringe wage benefits which Servel, Inc., failed to pay them in breach of contract, basing their claims upon diversity of citizenship (R. 6-118).

Servel, Inc., moved to dismiss the complaint as to all plaintiffs. The District Court granted such motion as to the unions for want of federal jurisdiction. The District Court then treated the motion to dismiss as to the individual plaintiffs as a motion for summary judgment and without trial entered summary judgment for Servel, Inc., as against the individual plaintiffs. In so doing, the District Court made findings of facts and entered an order

and declaratory judgment that the agreement was in force, but interpreted said agreement contrary to plaintiffs' contentions. Appendix B, *infra*, pp. 14A-21A.

The Court of Appeals for the Seventh Circuit affirmed the judgment of the District Court on plaintiffs' appeal. Appendix A, *infra*, pp. 1A-13A.

The complaint is based upon a joinder of two basic claims: The claim of the unions for breach of contract under Section 301 (a), and the separate claims of individual employees for fringe wage benefits under diversity jurisdiction.

The unions' claim, which was dismissed for want of jurisdiction, specifically invokes federal jurisdiction pursuant to Section 301 (a), with respect to the unions (R. 7). It further alleges that this is a suit for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce (R. 6-8), that the unions are the exclusive collective bargaining representative of defendant's employees in a bargaining unit defined by the National Labor Relations Board (R. 7-8, 15-16), that the members of the unions are required to continue their union membership during their employment with defendant (R. 16), that the defendant agreed to deduct union dues from its employees who authorized union dues check-off during their term of employment and the duration of the agreement (R. 17-18), that defendant wrongfully attempted to discharge its employees in violation of said contract (R. 11), that the unions have the right under the contract to challenge the propriety of the discharge of defendant's employees (R. 74-75), and specifically alleges that the unions bring this action, not only to enforce the rights of defendant's employees, for whom the unions are the collective bargaining representative, but to enforce the rights of the unions in said agreement (R. 8). The complaint prays that the

Court enter a declaratory judgment declaring that said agreement is still in full force and effect (R. 12).

The wage claims of the individual employee-plaintiffs which were joined in the complaint, allege that the collective bargaining agreement conferred certain fringe wage benefits in the form of holiday pay, vacation pay, insurance benefits, and pension rights upon Servel's employees who had acquired seniority, that employees who were laid off retained their seniority and the right to obtain these fringe benefits for as long as twenty-four months, depending upon the amount of their seniority at the time of their lay-off (R. 9-10). The complaint further alleges that these fringe wage benefits were refused by Servel, that the individual plaintiffs had attained seniority pursuant to the agreement and were entitled to these benefits, that on December 20th, 1957, Servel attempted to discharge its employees, including the individual plaintiffs, in violation of the agreement, that these individual plaintiffs had spent many years in arduous and faithful service to Servel and are now too old to find jobs elsewhere, and prays for judgment for these wages in the form of fringe benefits (R. 10-12).

The uncontroverted evidence in the record establishes that although Servel has not gone out of business, it began to sell all of its property which was divided into four manufacturing divisions in 1956 (R. 205-222, 226).

In each such instance, where a manufacturing division was sold, and Servel no longer needed the services of its employees in that division, it did not discharge those employees, but gave them permanent lay-offs when their jobs were permanently discontinued. After permanent lay-offs, the employees were afforded the various seniority and pension rights and wage benefits which the plaintiffs seek in this case, in accordance with the seniority and other provisions of the agreement (R. 125, 205, 208, 273).

However, although the last manufacturing division ceased production on June 1, 1957, and its employees were given permanent lay-offs and seniority rights at that time, on December 20th, 1957, Servel sent a letter to all its employees stating that they were discharged. Servel then refused to allow them to continue to retain their seniority for the full two-year period provided in the agreement, and refused to allow them to obtain the fringe wage benefits in the form of pension rights, holiday and vacation pay which they had enjoyed up to that time in accordance with the agreement (R. 9-11, 125-143, 274).

Although Servel also terminated the employment of eight of its executives, it has continued and will until 1961 continue to pay wages and benefits to them, while refusing to do so with respect to the individual plaintiffs (R. 289-290).

Servel, and the courts below, have justified Servel's action on the ground that it was authorized by Paragraph 15 of the collective bargaining agreement which is a part of the complaint and provides: "The management of the business of the Company and a direction of its employees are the exclusive responsibilities of the Management, except as expressly modified by the terms of this Agreement" (R. 19). However, petitioners rely on the fact that this Paragraph is expressly modified by Paragraph 185 which provides: "Seniority employees may be disciplined or discharged only for just cause. The Union reserves the right to challenge the propriety or severity of any disciplinary layoff or discharge of a seniority employee" (R. 74-75). The Record establishes that this Paragraph, as well as the rest of the agreement, was intended to apply and has been applied in the past by both plaintiffs and defendant herein to cover the similar situation of seniority employees in the bargaining unit whose jobs were eliminated as the result of discontinuance of any

major portion of defendant's manufacturing operations (R. 208). In such instance, said parties have interpreted and applied this agreement to afford to all such employees various seniority rights and wage benefits conferred by the agreement, which benefits are claimed by the plaintiffs herein (R. 208).

REASONS FOR GRANTING WRIT.

1. Conflict With Applicable Decision of This Court and With the Decisions of Other Courts of Appeals.

The decision of the Court of Appeals in this case conflicts with the applicable decision of this Court in *Textile Workers Union of America v. Lincoln Mills* (1957), 353 U. S. 448.

Although the decision of this Court in *Lincoln Mills* sharply limited the applicability of its prior decision in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.* (1954), 348 U. S. 437, the decision of the Court of Appeals in the case at bar held to the contrary. Thus the Court said: "We find nothing here (in *Lincoln Mills*) that modifies *Westinghouse*. . . . We hold that Section 301 (a) did not confer jurisdiction on the district court to entertain this action by the plaintiff unions. . . ." (*infra*, pp. 9A-10A).

In *Lincoln Mills* this Court held that Section 301 (a) conferred jurisdiction upon the federal courts to entertain actions by unions to enforce collective bargaining agreements, that it created substantive rights and that it expressed the federal policy that federal courts should enforce these agreements.

However, the decision below holds in substance that the only provision in a collective bargaining agreement which is enforceable by unions in federal courts is a provision to

arbitrate. Thus, although the complaint in the case at bar specifically alleges that the agreement in question confers the right upon the unions to challenge the propriety of the discharge of Servel's employees, and that this action is brought to enforce the rights *of the unions* in said agreement, the court below held there was no jurisdiction under Section 301 (a). The court below tried to soften its head-on collision with *Lincoln Mills* by reading out of the contract the specific provision giving the unions the right to challenge the propriety of the discharge of Servel's employees, and then stating that under such unfavorable and strained construction of the contract, the discharge of the employees was not wrongful. This argument, however, cannot hold water, because the law is well-settled, as the court below repeatedly has recognized in other decisions, that a court cannot, on a motion to dismiss, adopt the most unfavorable construction possible of the contract adverse to a plaintiff, on which contract the complaint was based, and thus attempt to justify its dismissal of the complaint. *Chicago & Northwestern R. R. Co. v. Chicago Packaged Fuel Co.* (7 Cir., 1950), 183 F. 2d 630; *Carroll v. Morrison Hotel Corp.* (7 Cir., 1945), 149 F. 2d 404, 406.

What the court below ignored and what clearly establishes that the case at bar is above all things a *union* controversy, and not a controversy of individual employees, is the fact that the grievance procedure in the agreement does not make arbitration mandatory; it gives the union the option of appealing an unsettled grievance either to a board of arbitration or to the courts. Therefore the suit in the case at bar is itself part of the grievance process, with which the union itself is peculiarly and vitally concerned.

Thus the factual situation presented in the case at bar is almost identical with that presented to this Court in *Goodall-Sanford, Inc. v. United Textile Workers of America* (1957), 353 U. S. 550, where this Court in a com-

panion case to *Lincoln Mills* held that Section 301 (a) conferred jurisdiction to entertain a suit to compel arbitration where the issue was identical to that in the case at bar—whether the employer was justified in terminating the employment of certain employees instead of laying them off and preserving their seniority and other rights. It would be a frustrating and unreasonable construction of Section 301 (a) to hold that jurisdiction is lost because the unions sought to have this issue determined by a court in the first instance, rather than by an arbitrator, which is what the plaintiff unions did in the case at bar.

The facts in the record herein establish that the controversy in this case is not a minor union controversy, but vitally affects the very existence of the plaintiff local union. If Servel can discharge its employees in violation of the collective bargaining agreement, it can deprive the union of its right to be the exclusive bargaining representative of Servel's employees, to have a modified union shop, and to have dues check-off from them, all of which rights are specifically set out in the collective bargaining agreement which is a part of the complaint herein.

Further, the decision of the Court of Appeals in the case at bar directly conflicts with the decisions of the Courts of Appeals for the Fourth and Sixth Circuits.

Thus, in *Textile Workers Union of America v. Arista Mills Co.* (4 Cir., 1951), 193 F. 2d 529; the Court of Appeals for the Fourth Circuit squarely held that Section 301 (a) confers jurisdiction on a suit brought by a labor union "with respect to the alleged breaches of contract relating to refusal to accord to striking employees the status and rights to which they were entitled under the collective bargaining agreement" (193 F. 2d at 534).

This decision was cited by approval by this Court in *Lincoln Mills* (353 U. S. 448 at p. 451, footnote 2).

Yet the court below in the case at bar held that there was no jurisdiction to grant relief to the plaintiff unions with respect to the alleged breaches of contract relating to refusal to accord to Servel's employees the seniority status and rights to which they were entitled under the collective bargaining agreement.

The direct conflict between the Fourth and Seventh Circuits is clearly shown by the fact that the court below in its decision relied, in part, on *Textile Workers Union of America v. Cone Mills Corp.* (D. C. N. C.), 166 F. Supp. 654, and cited same at footnote 4 to its opinion (*infra*, p. 8A).

However, this decision in the *Cone Mills Corp.* case has recently been reversed by the Court of Appeals for the Fourth Circuit. *Textile Workers Union of America v. Cone Mills Corp.* (4 Cir., 1959), ... F. 2d ..., 37 CCH Labor Cases, Par. 65,587.

In *American Federation of Labor v. Western Union Telegraph Co.* (6 Cir., 1950), 179 F. 2d 535, the Court of Appeals for the Sixth Circuit held that Section 301 (a) conferred jurisdiction and created substantive rights where the union brought a suit for violation of a contract arising out of the employer's failure to afford pension rights to an employee as provided in the collective bargaining agreement.

Although the present suit also involved a claim that the employer failed to afford full pension rights to its employees in violation of the collective bargaining agreement, the Court of Appeals for the Seventh Circuit, contrary to the holding of the Sixth Circuit in *Western Union Telegraph Co.*, held there was no jurisdiction.

The *Western Union* case was also cited with approval by this Court in *Lincoln Mills* (353 U. S. 448 at p. 451, footnote 2).

We would point out that there is a conflict among the circuits on the question of union enforcement of pension plans which should be resolved here. Thus the court below professed to follow the decision of the Third Circuit in *United Steel Workers of America v. Pullman-Standard Car Mfg. Co.* (3 Cir., 1957), 241 F. 2d 547. While *Pullman* is distinguishable from the case at bar because in that case the court squarely recognized the right of unions to sue under Section 301 (a) to enforce promises running to them, such as the union shop and dues check-off, which are both present in the case at bar (241 F. 2d at p. 551), *Pullman* does indicate that Section 301 (a) does not confer jurisdiction where a dispute as to a pension plan is involved. Thus it also conflicts with the decision of the Sixth Circuit in the *Western Union Telegraph Company* case and this conflict should be resolved by this Court. It should also be pointed out that *Pullman* was announced before the decision of this Court in *Lincoln Mills*.

2. **The Importance of the Questions Raised.**

The questions raised in this case, and the conflict between the decision of the court below and the decision of this Court in *Lincoln Mills* and the decisions of the Courts of Appeals of the Fourth and Sixth Circuits, present federal questions of great importance in the statutory construction and administration of the Labor Management Relations Act.

If the decision of the court below, which it is believed to be erroneous, is permitted to stand, the holding of this Court in *Lincoln Mills* will be seriously undercut. The important federal policy which this Court there announced, that collective bargaining agreements should be enforced in order to obtain industrial peace, will be undermined, because only one narrow provision of a collective bargaining agreement, a provision for arbitration, is enforceable according to the holding of the court below.

The question of proper interpretation of application of pension plans is of tremendous importance, in view of the fact that the number of employees covered by private pension plans has more than tripled in the last fifteen years and more than seven million employees are covered by collectively bargained plans. Note, 70 Harvard Law Review 490; S. Rep. No. 1734, 84th Cong. 2nd Session, 11, 13 (1956).

As a matter of federal substantive law, which this Court held should be formulated under Section 301, the decision below, which denies to employees who have lost their jobs through no fault of their own, pensions for which they have substantially qualified, is a gross injustice and against the weight of the leading authorities. Note, 70 Harvard Law Review 490 at 500-503 and 497-498.

Further, the basic policy of the decision in *Lincoln Mills*, to secure uniformity of law with respect to interpretation and enforcement of collective bargaining agreements would be frustrated by the decision below. Since the court held there is no jurisdiction under Section 301, the only jurisdiction of a federal court in a case involving collective bargaining pensions or vacation benefits would be under diversity of jurisdiction where the laws of each of the fifty states would have to be applied. This ruling, if allowed to stand, would create a widespread divergence and conflict of law instead of the uniformity of federal law which this Court sought to achieve in *Lincoln Mills*. The court below, rejecting jurisdiction under Section 301 (a), interpreted the contract as a matter of state law under diversity of citizenship jurisdiction. It then held that the individual employees of Servel were not entitled to their fringe wage benefits in the form of vacation pay, holiday pay and pensions, because "the agreement makes no provision for the accrual or proration of any of these benefits." In so doing, the court went contrary to the general

federal law which has been followed by all the other circuits in which the question was presented, that vacation pay and holiday pay constitute wages for services rendered and that the closing of an employer's plant does not eliminate an employee's right to vacation pay, for the reason that such pay has already been earned by the employee for work which he has already rendered. *In re Wil-low Cafeterias, Inc.* (2 Cir., 1940), 111 F. 2d 429; *In re Public Ledger* (3 Cir., 1947), 161 F. 2d 762, 767-769; *United States v. Munro-VanHelms Co.* (5 Cir., 1957), 243 F. 2d 10, 13.

Finally, in this regard, we would respectfully point out that the basic question of a union's standing in enforcement of a collective bargaining agreement is also involved. Especially in connection with pensions, but also in connection with other disputed questions under a collective bargaining agreement, the resolution of a dispute as to one employee will vitally affect many others. A decision whether or not a particular employee is entitled to a pension under interpretation of an agreement, will directly affect the rights of all other employees who have rights in the same pension fund. The public policy behind the Labor Management Relations Act, which reflects a studied decision by the Congress that the group interest is sufficiently important to warrant giving the bargaining representative the statutory right to bargain about claims involving questions of contract interpretation, also warrants giving the bargaining representative the right to negotiate settlement of those claims through the courts. It has been repeatedly pointed out that "denying the group power to maintain the integrity of the contract by peaceful means might encourage renewed resort to economic weapons." *Cox, Rights Under a Labor Agreement*, 69 Har. L. Rev. 601, 639; *Parker v. Borock* (N. Y. Ct. of App. 1959), 156 N. E. 2d 297, 300, 36 Labor Cases, Par. 65,159, at p. 65,592 Fuld, J., concurring; *Prudential Insurance Com-*

pany of America v. Insurance Agents' International Union (D. C. S. D. N. Y. 1959), 169 F. Supp. 534.

3. Constitutional Question Presented.

It is especially important that this Court grant certiorari in this case because the decision of the Court of Appeals below has resulted in an unconstitutional construction of Section 301 (a). Thus, the decision below has deprived the plaintiff unions and their members of due process of law, as well as frustrated the underlying policy of the Labor Management Relations Act that the unions shall be the collective bargaining agents for their employees.

The questions presented herein require interpretation of a collective bargaining agreement, to which the petitioning unions herein were a signatory party. Yet, although the court below recognized that it interpreted said agreement contrary to the unions' contentions, it went on to hold that "the unions were not properly before the court and had no right to be heard" (*infra*, p. 10A).

This Court has repeatedly held: "The fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U. S. 306, 314; *Grannis v. Ordean* (1914), 234 U. S. 385, 394.

"It goes without saying that the requirements of a fair hearing include notice of the claims of the opposing party and an *opportunity to meet them.*" (Our emphasis.) *Federal Trade Commission v. National Lead Co.* (1957), 352 U. S. 419, 427; *Morgan v. United States* (1938), 304 U. S. 1, 18.

Further, although the individual employees who are co-plaintiffs herein alleged in their complaint that they

brought suit on behalf of all other employees similarly situated, the District Court apparently agreed with Servel's contention that these employee plaintiffs did not represent the other unnamed employees, and in its judgment referred to them as members of a class whom the employee plaintiffs "purport" to represent (R. 370-376). Yet the court in its judgment made a binding adjudication as to the rights of all these unnamed employees, ruling that they, too, were not eligible for seniority rights, holiday pay, vacation pay, pension rights and insurance benefits (R. 370-373).

Since the court did not find that the employee plaintiffs represented said other employees, the only representative of said individuals in this case are the unions, who are the sole collective bargaining representative of all of said employees (Pars. 1-2, R. 15-16).

Therefore, dismissing this action as to the unions and then entering a class judgment binding on all the unnamed employees who then remained without representation herein, is clearly a denial of due process of law to these unnamed employees. *Hansberry v. Lee* (1940), 311 U. S. 32; Fifth Amendment, *United States Constitution.*

4. The Injustice of the Decision Below:

Finally, petitioners would briefly point out that the decision below unjustly deprives many hundreds of employees of their hard-earned wages in the form of fringe wage benefits, and sets a dangerous precedent for employers to evade their contractual obligations. The record is undisputed that Servel's employees have worked long and hard for Servel, some of them spending as much as forty years in faithful service, relying on their right to retire on a small pension, and now that Servel cast them

off without severance pay, they are too old to find jobs elsewhere and are unemployed (R. 11, 131-143, 172-175, 244). The record further discloses a shocking disparity in their treatment when compared with that of Servel's executives who were also terminated, but to whom Servel is continuing to pay fringe wage benefits, while refusing to do so with respect to the plaintiffs (R. 289-290).

Justifying this arrangement, Servel took the position that any failure on its part to pay these benefits would be in complete disregard of these executives' agreements with Servel, upon which they relied in continuing in Servel's employ and serving its interests ably and faithfully (R. 290, 308).

But evidence is undisputed that the individual plaintiffs have also relied on their agreement with Servel in continuing in Servel's employ and serving its interests ably and faithfully (R. 10-11, 172-175).

We would also point out that this is not an instance of an employer's poor financial condition which makes it unable to pay fringe wage benefits due. Thus, Servel has agreed to pay to its President, in addition to his annual salary of $75,000.00, percentage compensation which already amounts to over Six Hundred and Fifty Thousand Dollars for 3 years, and will greatly accumulate each year, and will be paid to him for a period up to ten years *after* termination of his employment (R. 293-298).

Servel defended this arrangement by stating that failure to make these payments would be ". . . in derogation of the specific obligations of a contract openly arrived at by arms-length bargaining" (R. 305).

The contract whose specific obligations the employee plaintiffs rely on for their small pensions and fringe benefits, was not only openly arrived at by arms-length bargaining, but was the result of negotiations which were con-

ducted by the unions "in a spirit of harmony", resulting in "a mutually agreeable understanding", involved concessions by the unions and achieved "continued labor stability for Servel . . ." (R. 266).

This Court should require that an employer, having purchased labor stability, should pay the reasonable price for same which it agreed to pay. Requiring an employer to adhere to its collective bargaining agreement is as much within the ambit of Section 301 (a) as would be an employer's suit against a union which has resorted to the economic pressure of a strike in breach of a no-strike clause.

Jurisdiction herein is conferred by law and strengthened by justice.

CONCLUSION.

For the reasons stated this petition for a writ of certiorari should be granted.

Respectfully submitted,

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August, 1959.

APPENDIX.

APPENDIX A.

Decision of Court of Appeals.

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

September Term, 1958—April Session, 1959.

No. 12580.

Local Lodge 2040, International Association of Machinists, AFL-CIO, International Association of Machinists, AFL-CIO, Robert H. Brown et al.,
Plaintiff-Appellants,
v.
Servel, Inc., a Corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

June 24, 1959.

Before Duffy, Chief Judge, Hastings and Knoch, Circuit Judges.

Hastings, Circuit Judge. This action was brought in the district court by appellants, two labor unions, Local Lodge 2040, International Association of Machinists, AFL-CIO, and International Association of Machinists, AFL-CIO (the unions), and Robert H. Brown and a large number of employees of defendant, on their own behalf and for all other employees similarly situated (the employees), against de-

fendant, Servel, Inc. (Servel); appellee. The unions are the representative of the production and maintenance employees of Servel for purposes of collective bargaining. A collective bargaining agreement (the agreement) was entered into between the unions and Servel on April 25, 1957.

The unions, as the collective bargaining representative of the employees and on their behalf, invoked jurisdiction of the court under Section 301 (a) of the Labor Management Relations Act of 1947, 29 U. S. C. A., § 185. The employees asserted jurisdiction based upon diversity of citizenship. The complaint charged a breach of the agreement and sought a declaratory judgment that the agreement was then in force and a mandatory injunction ordering Servel to allow its employees to exercise pension and insurance rights provided for therein. It also demanded judgment in favor of the employees on their claims for wages arising out of holiday pay alleged due them for Christmas Day, 1957, and vacation pay for the year 1958.

Servel moved to dismiss the complaint as to all plaintiffs. The district court granted such motion as to the unions for want of federal jurisdiction and overruled it as to the individual plaintiffs, the employees. Treating the motion to dismiss as to the individual plaintiffs as a motion for summary judgment, and after considering the pleadings, a stipulation and the several depositions and affidavits offered by all parties, both in support of and against the motion, the trial court made findings of fact and entered an order and declaratory judgment that the agreement was in force but interpreting it contrary to plaintiffs' contentions, and granted Servel's motion for summary judgment as to all individual plaintiffs, except Maston Wright, whose claim for certain insurance benefits will proceed to trial. This appeal is taken from such order and judgments of dismissal and for summary judgment.

In their complaint appellants alleged that among certain rights and privileges conferred upon the employees by the agreement[1] were the following:

"A. Employees, who completed three months of service with the defendant, Servel, Inc., acquired seniority. • • •

"B. Employees, who were laid off, retained their seniority for a period of time ranging from at least 12 months to 24 months, depending upon the amount of their seniority at the time of their layoff. • • •

"C. All employees who reached the age of 65 years, while they had seniority with Servel, Inc., were granted the right to retire and receive a pension in accordance with the pension plan of Servel, Inc. which was not subject to modification during the life of the Agreement. • • •

"D. Employees who had earnings during the two weeks immediately prior to Christmas Day, 1957, were granted holiday pay for said day. • • •

"E. Employees with six months seniority as of January 1, 1958, who worked 350 or more hours during 1957, were granted vacations with pay of from 1 to 3 weeks, depending upon the number of hours they worked in 1957, and the length of their seniority. • • •

"F. All employees were given group insurance, including life insurance, accidental death and dismemberment insurance, weekly benefit, sickness and accident insurance and hospital and surgical insurance. • • •

"G. Employees who were laid off, but who retained their seniority, were given the right by said group insurance plan to continue said insurance.

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[1] The collective bargaining agreement was made a part of the complaint.

"H. Employees who were disabled so that they could not work, were granted by said insurance plan a period of continuation of life insurance, depending on their seniority at the time of their disability."

Appellants further alleged that these rights were part of the wages paid to the employees for work performed for Servel; that all of such employees have attained seniority pursuant to the agreement and were entitled to such benefits; that payment of these benefits had been refused by Servel and that such unpaid benefits were now wages due the employees. It was also alleged that, on December 20, 1957, Servel attempted to discharge all employees in violation of the agreement, and this alleged breach was the basis of the relief sought.

The evidence in the record shows that, on December 20, 1957, Servel had completely discontinued all of its manufacturing operations at its plant in Evansville, Indiana where the employees had been employed. Prior to that date Servel had disposed of portions of its business and all but nine of its employees who are plaintiffs herein had been on laid-off status for some time since their services were not needed. On or about December 20, 1957, each of the employees received a letter from Servel notifying them that:

"Servel, Inc., has completely discontinued all of its manufacturing operations.

"For the above reason, you are hereby regretfully notified that your employment with Servel, Inc., is permanently terminated and you are discharged effective December 20, 1957."

At the time it sent out this letter of discharge, Servel had completed arrangements for the sale of the last division of its business in Evansville. Although all of the plaintiff-employees had more than five years seniority, each of them was discharged prior to his sixty-fifth birth-

day, which is the year in which employees would first be eligible for any pension. No individual plaintiff was employed by Servel on Christmas Day, 1957, and none of them actually performed services for Servel in 1958.

It further appears from the record that, when Servel first began to dispose of portions of its business in 1956, the jobs of the affected employees were permanently discontinued and such employees were given permanent layoffs with their various rights under the agreement being continued in effect. It was not until Servel had completely closed all of its manufacturing operations on December 20, 1957 that the employees were discharged and such rights were terminated. There is no dispute as to continuing insurance benefits for employees who, at the time of their discharge, were disabled so they could not work, except with respect to plaintiff, Matson Wright.

Appellants contend that the employees were discharged in violation of Section 185 of the agreement which provides that they "*may be* disciplined or *discharged only for just cause.*" (Emphasis added.) However, the district court found that their discharge did not violate the agreement, but "was solely by virtue of the right to manage the business and to direct its employees reserved in the defendant, Servel, Inc., including the right to discontinue all its manufacturing operations when it saw fit * * *." Section 15 of the agreement provides that: "The management of the business of the Company and the direction of its employees are the exclusive responsibilities of the Management, except as expressly modified by the terms of this Agreement." Appellants concede Servel's right to discontinue its manufacturing operations and to terminate the services of its employees when they are no longer needed. They contend, however, that Section 185 of the agreement modifies Section 15 and that such discontinuance is not "just cause" for discharge and not grounds for terminating benefits payable under the agreement.

I.

Does Section 301 (a) of the Labor Management Relations Act of 1947 confer federal jurisdiction on the district court to entertain this action by the plaintiff unions?[2]

We have already set out the rights of the employees as alleged in the complaint. The only allegations in the complaint relating to the unions are that (1) they are the representatives of the employees for the purpose of collective bargaining with respect to pay, wages, hours and all other conditions of employment; (2) that they entered into the subject agreement with Servel; and (3) that they bring this action as such collective bargaining representative to enforce the rights of the unions in the agreement. The relief prayed for is a money judgment in favor of the discharged employees, a declaration that the agreement is still in full force and effect and an order allowing pension and insurance rights to employees pursuant to the agreement.

The unions claim no pecuniary interest in the benefits the individual plaintiffs seek to recover, and they could not properly do so since these rights flow directly to the employees. They have not alleged the specific violation of any rights reserved to them under the contract, other than the right to challenge the discharge of the employees on December 20, 1957, as being without "just cause" in violation of Section 185 of the agreement. However, a fair reading of Sections 185 and 15 of the agreement, quoted in part above, shows that Section 185 was not intended to modify Section 15 which deals with man-

[2] Section 301 (a) provides:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

agement prerogative. Section 185 clearly applies to cases where an employee is subject to discipline or discharge without just cause at which time the union is given the right to challenge the propriety or severity of such action pursuant to grievance procedures thereinafter set out. It has no application to the separation from employment that must inevitably follow the final closing of the phase of the business in which the employees were engaged.

The fact that the agreement is made a part of the complaint and the unions are parties to the agreement does not alter the theory of the complaint or change the nature of the action. We can come to no other conclusion but that this is an action for the recovery of individual benefits due employees, and, as such, is clearly within the scope of the holding of the Supreme Court of the United States in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437 (1954). In *Westinghouse*, a labor union brought suit in a federal district court against an employer to collect wages due its employee members, alleging the breach of a collective bargaining agreement. It sought a declaratory judgment interpreting the contract and a declaration of the rights of the parties, together with an accounting and judgment for the unpaid wages in favor of individual employees who were not parties to the suit. The Court held that Section 301 of the Labor and Management Relations Act did not authorize a labor union to maintain such an action in a federal court. Since, in the case at bar, appellants specifically plead in their complaint that the rights sought to be enforced for the employees "were a part of the wages and compensation" paid to them for their work, we are unable to distinguish the instant case from the situation found in *Westinghouse* as it relates to the union plaintiffs, and we hold that it is controlling here.

In *United Steelworkers of America v. Pullman-Standard Car Manufacturing Co.*, 3 Cir., 241 F. 2d 547 (1957), the

Third Circuit reviewed the holding in *Westinghouse*, together with subsequent cases in which federal courts had continued to entertain union actions under Section 301, and concluded, at page 552:

> "This body of recent decisions distinguishing Westinghouse points to the likelihood that the language used by the Chief Justice [in a concurring opinion][3] was intended to draw a distinction which would serve to restrict jurisdiction under Section 301 to substantive matters which, whatever the personal interests involved, directly and primarily affect the complaining union as an organization, and procedural controversies about the proper administration of the collective bargaining process for which the union as bargaining agent is responsible. This view leaves suits to establish pension claims, like suits on wage claims, in the category of litigation 'to enforce • • • uniquely personal right[s] of an employee', which the Chief Justice found to be outside of the intended scope of Section 301. To us this is a plausible and satisfactory rationalization, and we adopt it."

We agree.[4]

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[3] In the concurring opinion in *Westinghouse*, in which Mr. Justice Clark joined, the Chief Justice said, at page 461: "For us the language of § 301 is not sufficiently explicit nor its legislative history sufficiently clear to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal right of an employee for whom it had bargained to receive compensation for services rendered his employer."

[4] To the same effect see *United Electrical, R. & M. Wkrs. v. General Electric Co.*, D. C. Cir., 231 F. 2d 259, 261 (1956); *Textile Workers Union of America v. Cone Mills Corp.*, D. C. M. D. No. Carolina, 166 F. Supp. 654, 657-660 (1958); *Communications Workers v. Ohio Bell Telephone Co.*, D. C. N. D. Ohio, 160 F. Supp. 822, 824, 825 (1958); *Textile Workers Union v. Bates Manufacturing Co.*, D. C. D. Maine, 158 F. Supp. 410, 412 (1958); *Portsmouth Artists Assn. v. I. Hirst Enterprises, Inc.*, D. C. E. D. Pa., 134 F. Supp. 203, 204 (1955).

Appellants seek support for their position in our holding in *United Protective Workers of America v. Ford Motor Co.*, 7 Cir., 194 F. 2d 997 (1952). This reliance is misplaced. In the *Ford Motor Company* case we held that a labor union could maintain an action in federal court under Section 301 (a) for the breach of a labor contract arising from the alleged wrongful dismissal of an employee. However, in that case the union predicated its action on the employer's refusal to recognize the union's demand "'* * * that the grievance procedure provided in said collective bargaining agreement * * * be utilized as a means of attempting a settlement of the wrongful dismissal of plaintiff * * *.'" (*id.* at 1001.) This was a clear breach of the bargaining agreement and involved a right flowing directly to the union. There is no charge in the instant case that the unions sought to invoke or that Servel refused to submit to the grievance procedure set out in the agreement.

Jurisdiction under Section 301 (a) is also urged in light of the holding in *Textile Workers Union of America v. Lincoln Mills*, 353 U. S. 448 (1957), which appellants claim modified the *Westinghouse* case. We do not agree. *Lincoln Mills* held that under Section 301 (a) a union could have specific performance of a bargaining agreement to arbitrate a grievance dispute, the employer having refused such arbitration. It further held that substantive law to be applied in suits under Section 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws. We find nothing here that modifies *Westinghouse*. Indeed, as Mr. Justice Douglas points out in footnote 6, at page 456 of that opinion: "* * * [the *Westinghouse* case] is quite a different case. There the union sued to recover unpaid wages on behalf of some 4,000 employees. The basic question concerned the standing of the union to sue and recover on those individual employment contracts. The question here concerns the

right of the union to enforce the agreement to arbitrate which it has made with the employer.'"

We hold that Section 301 (a) did not confer jurisdiction on the district court to entertain this action by the plaintiff unions and that the trial court did not err in dismissing the action as to them.

This holding is dispositive of appellants' claim that the unions and unnamed employees of Servel were denied due process of law in being deprived of an opportunity to be heard on any of the issues presented herein. The unions were not properly before the court and had no right to be heard. The unnamed employees were represented throughout the proceeding by the named employees. It should also be noted that unions offered proof in opposition to defendant's motions, were heard along with the individual plaintiffs and were represented by the same counsel.

II.

Did the discontinuance of all manufacturing operations by Servel justify the discharge of all the individual plaintiffs on December 20, 1957, including those who had been previously laid off?

Appellants contend that when the employees were permanently laid off by Servel during the course of its discontinuance of its manufacturing operations that they then achieved the status of laid-off employees with two years seniority from the time of layoff as provided in the agreement. They also contend that this status gave such employees the vested right to maintain their group life insurance during the two years, their hospitalization insurance for one year, the right to certain wage benefits and the right to retire under the pension plan if they reached the age of 65 years during this two year period following layoff during which they retained seniority. They further argue that the discharge of the employees on December 20, 1957 was not for just cause, the employees having

done nothing that was just cause for their discharge and that such action was therefore a clear breach of the agreement. We do not think this argument is well-founded. We have already indicated that we think Section 185 of the agreement providing for discharge "only for just cause" does not relate to the situation arising when the employer discontinues its manufacturing operations in which the affected employees were engaged.

Appellants cite several cases holding in effect that employees' seniority under a labor agreement and the rights appurtenant thereto are property rights which are entitled to protection, and that unilateral action of an employer in an attempt to deprive an employee of such rights and benefits in violation of a labor agreement is improper. *United Protective Workers of America v. Ford Motor Co.*, 7 Cir., 194 F. 2d 997 (1952); *American Federation of Labor v. Western Union Tel. Co.*, 6 Cir., 179 F. 2d 535 (1950); *Nord v. Griffin*, 7 Cir., 86 F. 2d 481 (1936). These cases all concern the dismissal of an individual employee under circumstances not related to the employer discontinuing its manufacturing operations. *Vallejo v. American R. Co. of Porto Rico*, 1 Cir., 188 F. 2d 513 (1951), also cited by appellants, deals only with vested rights of employees to pensions upon discontinuance of an employer's business due to bankruptcy, and has no application here.

The discharge of employees by reason of discontinuance of business operations does not come within a provision of a collective bargaining agreement prohibiting an employer from discharging its employees except for just cause.[5] Servel's discharge of its employees under these circumstances was not for cause in the sense contemplated

[5] *See Karez v. Luther Manufacturing Co.*, (Mass.) 155 N. E. 2d 441, 445 (1958); *R. F. Curry, Inc. v. Riddle*, 86 N. Y. S. 2d 674, 676 (1949); *Application of Berger*, 78 N. Y. S. 2d 528, 530-531 (1948); *Imdale v. Jacob Dold Packing Co.*, 17 N. Y. S. 2d 930, 933 (1940), aff'd 24 N. Y. S. 2d 134

by the parties to the contract but was by virtue of the right retained by the employer in the agreement to the exclusive responsibility for the management of its business. Cf. *Chicago & North Western Railway Company v. Order of Railroad Telegraphers*, 7 Cir., 264 F. 2d 254 (1959). We have been cited to no cases to the contrary.

Contrary to appellants' contention, we find nothing in the agreement providing for a *permanent* layoff status to these employees or giving vested rights to seniority for two years following their layoff. Seniority rights depend upon an employer-employee relationship; they do not guarantee such a relationship but merely define the rights of an employee when that status is in existence, and the right of seniority is not inconsistent with the right of an employer to discharge its employee. See *Held v. American Linen Supply Co.* (Utah), 307 P. 2d 210, 212 (1957).

We hold that the district court did not err in its finding that the discharge of the individual party plaintiffs on December 20, 1957 by Servel did not violate the collective bargaining agreement in issue.

III.

Are the individual plaintiffs eligible for pension, holiday and vacation benefits under the collective bargaining agreement?

The district court found (1) that no employee of the class represented by the individual plaintiffs was eligible for pension benefits under Servel's pension plan because each such person was discharged prior to his sixty-fifth birthday; (2) that no such employee was entitled to receive holiday pay for Christmas Day, 1957 because no such person was an employee of Servel on that day as required by Section 89 of the agreement; and (3) that no such employee was entitled to vacation pay in 1958 because no such person was an employee of Servel with

seniority on January 1, 1958 as required by Section 237 of the agreement.

In view of our disposition of the preceding issue under part II of this opinion, we hold that the district court did not err in such findings. We have examined the cases cited by appellants under this proposition and do not find them to be controlling. Our attention has been called to the fact that the agreement makes no provision for the accrual or proration of any of these benefits. Likewise, Section 18 of the agreement expressly provides that Servel's right to discipline or discharge employees shall not be affected by reason of any of the provisions of the pension plan, subject to the further provision that any employee *otherwise entitled* to receive benefits shall not be deprived of them by reason of such disciplinary action or discharge.

IV.

Are there any issues of material facts with respect to insurance benefits?

We have examined the record relative to the contentions of parties with respect to this issue. We need not burden this opinion with a recital of it. It is sufficient to say that, in our opinion, the court did not err in its findings as to the insurance benefits and that there are no issues of material facts with respect thereto, except as to Maston Wright. No contention as to Wright is raised in this appeal. Summary judgment was properly entered.

The judgment of the district court is

Affirmed.

A true copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B.

Decision of the District Court.

UNITED STATES DISTRICT COURT,
Southern District of Indiana,
Evansville Division.

Local Lodge 2040, International Association of Machinists, AFL-CIO et al.,

vs.

Servel, Inc.

No. EV 58-C-11.

ORDER.

The above entitled cause came before the Court on defendant's Motion to Dismiss, the third paragraph of which is being treated as a Motion for Summary Judgment under Rules 12 and 56.

And the Court, having heard the argument of counsel and being fully advised in the premises, now finds that paragraph 1 of defendant's Motion to Dismiss as to the plaintiffs, Local Lodge 2040, International Association of Machinists, AFL-CIO, and International Association of Machinists, AFL-CIO, should be sustained because the Complaint shows no federal jurisdiction over the subject matter as to said two plaintiff unions.

And the Court, having heard the argument of counsel and being fully advised in the premises, now finds that paragraph 2 of defendant's said Motion to Dismiss on the ground of lack of jurisdiction over the subject matter as to the plaintiff, Robert H. Brown, and all other named individual party plaintiffs, and all the individual members

of the class which the named individual party plaintiffs purport to represent in this action, should be overruled.

And the Court, with reference to paragraph 3 of defendant's said Motion to Dismiss which is being treated as a Motion for Summary Judgment under Rules 12 and 56, having heard the argument of counsel and having before him the pleadings and all the evidence offered by all the parties, both in support of and against said Motion, including the following:

(a) Plaintiffs' Complaint, as amended.

(b) The stipulation of all the parties made before the Court on June 24, 1958.

(c) The deposition of Duncan C. Menzies.

(d) The deposition of John H. Wall.

(e) The deposition of Jack deForest.

(f) The defendant's answers to the interrogatories as propounded by the plaintiffs.

(g) The affidavit of Jacob W. Turpen, filed by the plaintiffs on May 21, 1958.

(h) The affidavit of John R. Hudson, filed by the plaintiffs on May 21, 1958.

(i) The affidavit of Marshall E. Osborne, filed by the plaintiffs on May 21, 1958.

(j) The affidavit of Arthur H. Buckman, filed by the plaintiffs on May 21, 1958.

(k) The affidavit of Joe Kemmeling, filed by the plaintiffs on May 21, 1958.

(l) The affidavit of Robert H. Brown, filed by the plaintiffs on June 20, 1958.

(m) The supplemental affidavit of Robert H. Brown, filed by the plaintiffs on August 1, 1958.

(n) The affidavit of Boyd Wright, filed by the plaintiffs on October 7, 1958.

(o) The two affidavits and the copy of notice, designated as "Exhibit A," "Exhibit B" and "Exhibit B-1," respectively, to defendant's Motion to Dismiss, filed by the defendant on April 18, 1958.

(p) The two affidavits of Harold Luke, designated as "Exhibit C" and "Exhibit D," respectively, to defendant's Motion to Dismiss, filed by the defendant on August 1, 1958.

now finds that the material facts which exist herein without substantial controversy are as follows:

1. That on or before December 20, 1957, the defendant, Servel, Inc., had completely discontinued all its manufacturing operations at its manufacturing plant in the City of Evansville, Vanderburgh County, State of Indiana.

2. That on or about December 20, 1957, each of the named individual party plaintiffs, and each of the individual members of the class which the named individual party plaintiffs purport to represent, received from the defendant, Servel, Inc., a letter notifying them that, because of the complete discontinuance of all its manufacturing operations, all such persons' employment with said defendant was permanently terminated, and that all such persons were discharged effective December 20, 1957.

3. That the complete discontinuance of all the manufacturing operations of the defendant at its manufacturing plant in the City of Evansville, Indiana, and the issuance and receipt of said letter on or about December 20, 1957, effected a permanent termination of employment and a discharge, effective December 20, 1957, of each of the named individual party plaintiffs and each of the members of the class which the named individual party plaintiffs purport to represent.

4. That said termination of employment and said discharge of each of the named individual party plaintiffs, and each of the members of the class which the named individual party plaintiffs purport to represent, was solely by virtue of the right to manage the business and to direct its employees reserved in the defendant, Servel, Inc., including the right to discontinue all its manufacturing operations when it saw fit, and such termination of employment and discharge did not violate the collective bargaining agreement designated as "Exhibit 1" to plaintiffs' Complaint, as amended.

5. That each of the named individual party plaintiffs, and each of the members of the class which the named individual party plaintiffs purport to represent, lost all seniority rights granted them by said collective bargaining agreement by reason of their discharge on December 20, 1957, under the terms of paragraph 131 (a) of said collective bargaining agreement.

6. That no named individual party plaintiff, nor any of the members of the class which the named individual party plaintiffs purport to represent, is eligible for pension benefits under the pension plan of the defendant, Servel, Inc., because each such person was discharged by the defendant, Servel, Inc., on December 20, 1957, prior to his sixty-fifth birthday.

7. That no named individual party plaintiff, nor any member of the class which the named individual plaintiffs purport to represent, is entitled to receive holiday pay for Christmas Day, 1957, because no such person was an employee of the defendant, Servel, Inc., on Christmas Day, 1957, as required by paragraph 89 of said collective bargaining agreement.

8. That no named individual party plaintiff, nor any member of the class which the named individual party

plaintiffs purport to represent, is entitled to vacation pay in 1958 because no such person actually performed services for the defendant, Servel, Inc., in 1958, and no such person was an employee with seniority of the defendant, Servel, Inc., on January 1, 1958, all as required by paragraph 237 of said collective bargaining agreement.

9. That no named individual party plaintiff, nor any member of the class which the named individual party plaintiffs purport to represent, has any rights to be insured under the terms of any of the group insurance policies carried by the defendant, Servel, Inc. including specifically Group Life Insurance Policy No. 5270, Group Accidental Death and Dismemberment Insurance Policy No. LL2973, Group Accident and Disability Insurance Policy No. GS3350, Group Hospitalization and Medical Insurance Policy No. H40644 and Group Hospitalization, Medical and Surgical Insurance Policy No. H53977, all issued by the Aetna Life Insurance Company, because each such person was discharged by the defendant, Servel, Inc., effective December 20, 1957, and each such person's group insurance of every kind and nature above mentioned terminated on or before December 31, 1957, except, however, that said Group Life Insurance Policy No. 5270 continued to remain applicable to those of such persons who were disabled so that they could not work in accordance with and as provided for in said collective bargaining agreement.

10. That continuously from prior to the 20th day of December, 1957, the defendant, Servel, Inc., has continued to carry said Group Life Insurance Policy No. 5270 for the benefit of each and all of the named individual party plaintiffs, and the members of the class which the named individual party plaintiffs purport to represent, who were disabled so they could not work, at the sole cost and expense of the defendant, Servel, Inc., in accordance with

and as provided for in said collective bargaining agreement, except that the defendant, Servel, Inc., has not continued to carry group life insurance under Group Life Insurance Policy No. 5270 for the benefit of the plaintiff, Maston Wright.

On this showing, the defendant, Servel, Inc., has established that none of the named individual party plaintiffs, nor any of the members of the class which the named individual party plaintiffs purport to represent, except for the plaintiff, Maston Wright, have any cause of action. Such a showing has not been successfully controverted by the plaintiffs.

The Court finds that there is a genuine issue of material fact existing as to the plaintiff, Maston Wright, and that such issue of fact is whether said plaintiff, Maston Wright, was disabled to the extent he could not work on December 20, 1957.

It Is, Therefore, Ordered, Adjudged and Decreed that the defendant's Motion to Dismiss, as against the plaintiffs, Local Lodge 2040, International Association of Machinists, AFL-CIO, and International Association of Machinists, AFL-CIO, be and the same hereby is granted and said complaint is hereby dismissed as to said plaintiff unions.

It Is Further Ordered, Adjudged and Decreed that the defendant, Servel, Inc., is not entitled to have plaintiffs' Complaint dismissed on the ground set out in paragraph 2 of defendant's said Motion.

It Is Further Ordered, Adjudged and Decreed that the defendant's Motion for Summary Judgment be, and the same is hereby granted, except as to the plaintiff, Maston Wright, and that the named individual party plaintiffs, and the members of the class which the named individual party plaintiffs purport to represent, except for the plain-

tiff, Maston Wright, have and recover nothing by their suit.

It Is Further Ordered, Adjudged and Decreed that said Motion for Summary Judgment be, and it hereby is, denied as to the plaintiff, Maston Wright.

It Is Further Ordered, Adjudged and Decreed that said collective bargaining agreement is still in force and effect; provided, however, that said collective bargaining agreement, with respect to pension rights under the pension plan of the defendant, Servel, Inc., referred to in said agreement, does not apply to any of the named individual party plaintiffs, nor to any of the members of the class which the named individual party plaintiffs purport to represent; and provided further, however, that said collective bargaining agreement, with respect to group insurance rights, does not apply to any of the named individual party plaintiffs, nor to any of the members of the class which the named individual party plaintiffs purport to represent, except as to those named individual party plaintiffs, or the members of the class which the named individual party plaintiffs purport to represent, who became disabled to the extent they could not work on or before December 20, 1957, and who remained so disabled continuously until December 20, 1957, and as to such plaintiffs the defendant, Servel, Inc., is ordered to continue their group life insurance under Group Life Insurance Policy No. 5270 in accordance with and as provided for in said collective bargaining agreement.

It Is Further Ordered, Adjudged and Decreed that the Clerk of this Court enter a final judgment upon the Order herein dismissing this cause of action as against the plaintiffs, Local Lodge 2040, International Association of Machinists, AFL-CIO, and International Association of Machinists, AFL-CIO, and upon the Order herein that the named individual party plaintiffs, and the members of the

class which the named individual party plaintiffs purport to represent, except for the plaintiff, Maston Wright, have and recover nothing by their suit, and the Court expressly determines that there is no just reason for delay in the entry of final judgment on this Order.

It Is Further Ordered, Adjudged and Decreed that the defendant, Servel, Inc., recover its costs and charges in its behalf expended and for execution therefor against each and all of the plaintiffs, except for the plaintiff, Maston Wright.

Dated this 17 day of December, 1958.

(Signed) Cale J. Holder,
Judge, United States District Court,
Southern District of Indiana.

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JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1959

No. 364

LOCAL LODGE 2040, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, *et al.*,
Petitioners,

v.

SERVEL, INC.,
Respondent

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Statute Involved	2
Questions Presented	2
Statement	2
Argument	6
Conclusion	20

CITATIONS

CASES:

American Federation of Labor v. *Western Union Telegraph Co.*, 179 F.2d 535 (C.A.6, 1950) 13, 14

Association of Westinghouse Employees v. *Westinghouse Electric Corp.*, 348 U. S. 437 ..... 6, 7, 8, 9, 10, 12, 13, 14

Brotherhood of Railroad Trainmen v. *Chicago River & Indiana R. Co.*, 353 U. S. 30 12

Burlesque Artists Ass'n v. *I. Hirst Enterprises*, 134 F. Supp. 203 (E.D.Pa., 1955) 8

Communications Workers v. *Ohio Bell Telephone Co.*, 265 F.2d 221 (C.A.6, 1959) 14

Communications Workers v. *Ohio Bell Telephone Co.*, 160 F. Supp. 822 (N.D.Ohio, 1958), affirmed *per curiam*, 265 F.2d 221 (C.A.6, 1959) 7, 10

Elgin, J. & E. R. Co. v. *Burley*, 325 U. S. 711 18

Garfield Local 13-566 v. *Heyden Newport Chemical Corp.*, 172 F. Supp. 230 (D.N.J., 1959) 7

Goodall-Sanford, Inc. v. *United Textile Workers*, 353 U. S. 550 10

Goodall-Sanford, Inc. v. *United Textile Workers*, 233 F.2d 104 (C.A.1, 1956), affirmed, 353 U. S. 550 12

In re Public Ledger, 161 F.2d 762 (C.A.3, 1947) 16

Page

In re Wil-Low Cafeterias, Inc., 111 F.2d 429 (C.A.2, 1940) 16

International Longshoremen's and Warehousemen's Union v. *Libby, McNeill & Libby*, 221 F.2d 225 (C.A.9, 1955) 8

Item Co. v. *New Orleans Newspaper Guild*, 256 F.2d 855 (C.A.5, 1958), certiorari denied, 358 U. S. 867 12

Local 205 v. *General Electric Co.*, 233 F.2d 85 (C.A. 1, 1956), affirmed, 353 U. S. 547 11

National Labor Relations Board v. *American Nat'l Ins. Co.*, 343 U. S. 395 12

Parker v. *Borock*, 156 N. E. 2d 297 (N.Y., 1959) .. 18

Pennsylvania R. Co. v. *Day*, 360 U. S. 548 12

Silverton v. *Valley Transit Cement Co.*, 249 F.2d 409 (C.A.9, 1957) 7, 10

Slocum v. *Delaware L. & W. R. Co.*, 339 U. S. 239 .. 12

Textile Workers Union v. *Arista Mills*, 193 F.2d 529 (C.A.4, 1951) 13, 14

Textile Workers Union v. *Bates Manufacturing Co.*, 158 F. Supp. 410 (D.Me., 1958) 7, 10

Textile Workers Union v. *Cone Mills Corp.*, 44 LRRM 2345 (C.A.4, 1959) 13

Textile Workers v. *Lincoln Mills*, 353 U. S. 448 ..... 9, 10, 11, 12, 13, 14, 15

Textile Workers Union v. *Williamsport Textile Corp.*, 136 F. Supp. 407 (M.D.Pa., 1955) 8

United Electrical Workers v. *General Electric Co.*, 231 F.2d 259 (C.A.D.C., 1956), certiorari denied, 352 U. S. 872 8

United States v. *Munro-Van Helms Co.*, 243 F.2d 10 (C.A.5, 1957) 16

Page

United Steelworkers v. *Pullman-Standard Car Mfg. Co.*, 241 F.2d 547 (C.A.3, 1957) 7, 13, 14

STATUTE:

Labor Management Relations Act, Section 301(a) (29 USC § 185(a)) 2, 3, 6, 7, 8, 10, 11, 13, 14, 17, 19

MISCELLANEOUS:

Bickel & Wellington, "Legislative Purpose and the Judicial Process: The Lincoln Mills Case", 71 Harv. L. Rev. 1, 22-25 (1957) 12

92 Cong. Rec. 5705, 5722 7

93 Cong. Rec. 3839, 5014, 6283 7

Cox, "Rights Under a Labor Agreement", 69 Harv. L. Rev. 601, 608, 613 18

2 Remington, Bankruptcy, § 955 (1956 ed.) 16

Senate Report No. 1177 (Minority), 79th Cong., 2d Sess. pp. 3, 11-13 (1946) 7

Senate Report No. 105, 80th Cong., 1st Sess., pp. 15-18 (1947) 6

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1959

NO. 364

LOCAL LODGE 2040, INTERNATIONAL ASSOCIATION OF MACHINISTS; AFL-CIO, *et al.*,

Petitioners,

v.

SERVEL, INC.,

Respondent

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the court of appeals is reported in 44 LRRM 2340 and is also reprinted as Appendix A to the petition for certiorari. The district court's findings and order appear at pages 368-375 of the record and are also reprinted as Appendix B to the petition. The district court's judgment appears at page 376 of the record.

Jurisdiction

The judgment of the court of appeals was entered on June 24, 1959. The petition for a writ of certiorari was filed on August 31, 1959. The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code.

Statute Involved

Section 301(a) of the Labor Management Relations Act (29 USC § 185(a)) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Questions Presented

The primary question is whether Section 301(a) of the Labor Management Relations Act confers jurisdiction upon the federal courts to entertain this action by the petitioner unions to determine the individual rights of certain former employees to various individual employee benefits.

Secondary questions are (a) whether the discontinuance of all manufacturing operations by the respondent justified the discharge of the individual petitioners on December 20, 1957, and (b) whether the individual petitioners were entitled after their discharge to holiday, vacation, pension and insurance benefits.[1]

Statement

This action was brought in the United States District Court for the Southern District of Indiana by two labor unions (the International Association of Machinists and

1. The petition also contains an additional question presented, purporting to suggest that there were substantial contested issues of material facts with respect to insurance benefits. However, this question has not been argued in the petition and has presumably been abandoned. In any event, it is too insubstantial to warrant discussion herein (see Pet. 13A).

one of its locals) and some two hundred individuals, former employees of respondent, who were members of the unions (R. 2). The complaint alleged that the individual petitioners were wrongfully discharged by respondent and were denied insurance, holiday pay for Christmas Day, 1957, vacation pay for 1958, and pensions for employees who had not reached the age of 65 at the date of their discharge (R. 9-11). The individual petitioners brought this action also on behalf of other former employees of respondent (R. 8). The individual petitioners sought double the amount of benefits allegedly due to them as wages, under an Indiana statute providing for the recovery of "liquidated damages" of double the amount of unpaid wages due to an employee (R. 12). Attached to the complaint was the collective bargaining agreement executed by respondent and petitioner unions (R. 13-97). The petitioner unions were given certain rights under this agreement, such as recognition of their status as bargaining representative (par. 2, R. 16), a modified union shop (par. 3, R. 16), checkoff of union dues (par. 9, R. 17), arbitration machinery (par. 60, R. 29), and the use of a bulletin board (par. 75, R. 33). There was no allegation, however, that any of these "union right" provisions were violated. The complaint merely charges the breach of a number of "personal right" provisions, dealing with the rights of individual employees to vacation and holiday pay, pensions and insurance (R. 9-10). Significantly, all benefits claimed were those of the individual petitioners, allegedly as part of their wages and compensation (pars. 12, 13 and 17, R. 10, 12). There is nothing in the complaint about enforcing any specific union right. The only relief sought was for the benefit of the individual petitioners (R. 12).

Jurisdiction was alleged under Section 301(a) of the Labor Management Relations Act (*supra*, p. 2) and also on grounds of diversity of citizenship, for the individual

petitioners were all citizens of Indiana and respondent is a Delaware corporation (R. 6-7). Respondent moved to dismiss the complaint as to all petitioners (R. 119-121). On June 24, 1958, respondent requested that its motion directed to the individual petitioners should be treated as a motion for summary judgment (R. 145) and the district court simultaneously afforded petitioners, upon their request, the opportunity to take depositions and propound interrogatories, which they proceeded to do (R. 148, 149-367). On December 17, 1958, after full argument by counsel and submission of briefs, respondent's motion to dismiss for want of federal jurisdiction was sustained as to petitioner unions and summary judgment on the merits was entered against all the individual petitioners except Maston Wright, as to whom the court found an issue of fact as to his disability on the date of discharge (R. 368, 373-375, 376) as respondent admitted. This judgment was affirmed by the court of appeals (Pet. 13A).

The basic facts in this case can be briefly summarized. As the evidence shows and as found by the district court, on or before December 20, 1957, respondent had completely discontinued all of its manufacturing operations in Evansville, Indiana (R. 370). By then, respondent had reached an understanding with Whirlpool Corporation for the sale of the last division of respondent's business (R. 337-340), so that the last of respondent's manufacturing operations ceased at that time (R. 321). Consequently, on December 20, 1957, each of the individual petitioners received a letter notifying them that respondent had discontinued all of its manufacturing operations and that therefore they were discharged (R. 130, 370). Many of these persons were at the time on a laid-off status because respondent had previously disposed of its other divisions (R. 125, 156-159).

Each individual petitioner was discharged prior to his sixty-fifth birthday, which is the age at which employees would first be eligible for any pensions (R. 126, 371). No individual petitioner was an employee of respondent on Christmas Day, 1957 (R. 127, 371). No individual petitioner performed services in 1958 for respondent entitling him to vacation pay in 1958 (R. 126 127, 371). The group insurance policies carried by respondent for its employees all provide that the insurance of an employee shall terminate upon termination of employment or at the end of the calendar month in which termination occurs (R. 211-215, 372). Respondent has continued in effect one such policy at its sole expense for the benefit of those individual petitioners who were so disabled that they could not work on the date of discharge (R. 209-211, 372). The judgment of the district court ordered respondent to continue such policy and held that there was an issue of fact as to the disability of petitioner Maston Wright, and therefore declined to grant summary judgment as to him (R. 373-374).

ARGUMENT

The decision below is based on settled principles and is clearly correct. It does not conflict with decisions of this Court or the various courts of appeals.

The petition for certiorari is devoted almost entirely to the jurisdictional question as to the right of the petitioner unions to bring this action in a federal court. Respondent will demonstrate that the decision of the court below was clearly correct with respect to both jurisdiction and the merits. Moreover, none of the issues in this case is of sufficient importance to warrant review by this Court.

1. The jurisdictional issue in the courts below was governed principally by *Association of Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437, which specifically held that Section 301(a) of the Labor Management Relations Act (*supra*, p. 2) does not confer jurisdiction upon a district court in a suit by a union to collect wages allegedly due employees. There, as here, the complaint involved no more than a cause of action which is "peculiar in the individual benefit" or "the uniquely personal right of an employee" or which "arises from the individual contract between the employer and employee" (348 U. S. at pp. 460, 461, 464). Neither the language nor the legislative history of Section 301(a) is sufficient "to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal right of an employee for whom it had bargained to receive compensation for services rendered his employer" (348 U. S. at p. 461). The legislative history of the provision demonstrates that the primary concern of Congress was with the difficulties in suing unions as entities under the laws of many states. Senate Report No. 105, 80th

Cong., 1st Sess. pp. 15-18 (1947); 93 Cong. Rec. 3839, 5014; cf. Senate Report No. 1177 (Minority), 79th Cong., 2d Sess. pp. 3, 11-13 (1946); 92 Cong. Rec. 5705, 5722. The draftsmen were not concerned with enforcing liabilities of individual union members which could always be enforced under state law; indeed it was considered important that an employer's recovery under Section 301(a) be limited to the funds of the union as an entity. 93 Cong. Rec. 3839, 5014, 6283; cf. 92 Cong. Rec. 5705. Though there was little Congressional discussion of the use of Section 301(a) to enforce employer obligations, existing state law also often operated to prevent suits by labor unions as unincorporated associations, and Section 301(a) was undoubtedly designed to overcome this barrier to enforcement of contractual obligations running to unions. No such barriers are or ever were present in suits to enforce the rights of individual employees who have always been able to sue for wrongful discharge or to collect wages and other benefits. As the complaint here demonstrates, this is such a suit (R. 12; Pet. 6A).

Since the *Westinghouse* case was decided, Congress has not modified Section 301(a) and the principle of *Westinghouse* has consistently been followed by the lower courts. Thus under the *Westinghouse* decision suits brought by unions under Section 301(a) to enforce employees' claims to wages and other forms of compensation such as pensions and vacations are subject to dismissal. *Silverton* v. *Valley Transit Cement Co.*, 249 F. 2d 469 (C.A. 9, 1957); *United Steelworkers* v. *Pullman-Standard Car Mfg. Co.*, 241 F. 2d 547 (C.A.3, 1957); *Communications Workers* v. *Ohio Bell Telephone Co.*, 160 F. Supp. 822 (N.D.Ohio, 1958), affirmed *per curiam*, 265 F. 2d 221 (C.A. 6, 1959); *Garfield Local 13-566* v. *Heyden Newport Chemical Corp.*, 172 F. Supp. 230 (D.N.J., 1959); *Textile Workers Union* v. *Bates Manufac-*

turing Co., 158 F. Supp. 410 (D.Me., 1958); *Textile Workers Union* v. *Williamsport Textile Corp.*, 136 F. Supp. 407, 408 (M.D.Pa., 1955); *Burlesque Artists Ass'n* v. *I. Hirst Enterprises*, 134 F. Supp. 203, 204 (E.D.Pa., 1955). Following the *Westinghouse* decision, suits by unions for wrongful discharge of individual employees will also be dismissed when jurisdiction is sought under Section 301(a). *United Electrical Workers* v. *General Electric Co.*, 231 F. 2d 259 (C.A.D.C., 1956), certiorari denied, 352 U. S. 872; *International Longshoremen's and Warehousemen's Union* v. *Libby, McNeill & Libby*, 221 F. 2d 225 (C.A.9, 1955).

The petition for certiorari does not really attempt to distinguish *Westinghouse* and the decisions following it on their facts, nor is this possible. Although the complaint is devoid of any such allegations, the petition belatedly claims that this case involves a union right to challenge the propriety of the discharge of employees (Pet. 9). However, the provision on which petitioners rely only gives the union the right to challenge "disciplinary" discharges (par. 185, R. 74-75) as petitioners admitted below (R. 352, 335). The discharges in this case were not disciplinary but were necessitated by the total abandonment of respondent's manufacturing operations, and thus paragraph 185 of the contract does not apply to them. Contrary to petitioners' contention (Pet. 7), the record does not establish that paragraph 185 of the contract was intended to apply, and has been applied in the past in similar situations. Prior to December 20, 1957, respondent had never been confronted with a total abandonment of its operations. The discharges came rather within the management responsibilities provision of the contract (par. 15, R. 19; Pet. 5A-7A). To permit petitioners to challenge discharges in this situation would allow the unions to contest respondent's right to go out of

business.[2] Yet petitioners have conceded that respondent is free to close its plants and discharge all its employees for legitimate business reasons (Pet. 5A). This right is inherent in the management of the business which was the exclusive responsibility of respondent by the terms of the agreement (par. 15, R. 19). Consequently, the question in this case is whether, by reason of discharges for the foregoing reasons, the individual petitioners have been deprived of holiday, vacation, pension and insurance benefits as part of their individual compensation, in violation of the terms of their employment. Thus this question falls within the "personal rights" doctrine of the *Westinghouse* case.

The petitioners also contend that the discharges affect "the very existence of the plaintiff local union", including its right to union shop, dues checkoff, etc. (Pet. 10). But petitioners did not seek in their complaint nor do they now ask, as would be absurd, that respondent be compelled to stay in business so that the local union can continue to operate. The only contested relief sought is in the form of payments to individual employees, which of course will not maintain the existence of the local. Nor does the complaint allege that any of the contractual provisions giving rights to the union such as union shop, dues checkoff and arbitration were violated by respondent.

Because the present case is really indistinguishable from *Westinghouse*, petitioners contend that *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, "sharply limited" the *Westinghouse* decision and that the court below was therefore wrong in following it (Pet. 8). The petition fails to men-

2. Notwithstanding petitioners' assertion (Pet. 9), paragraph 60 of the collective bargaining agreement does not give the unions a right to appeal unsettled grievances to the courts. First, petitioners would have to exhaust the three grievance steps provided in the contract (par. 28, R. 22) and then submit any unsettled disputes to arbitration (par. 60, R. 29). Nothing in the grievance procedure gives the unions the right to file suits with respect to unsettled grievances. In any event, since the grievance procedure was not followed, paragraph 60 is of no avail to petitioners.

tion that *Westinghouse* was carefully distinguished in both the majority and concurring opinions in *Lincoln Mills*. There the union sought to enforce its right to have grievances submitted to arbitration whereas here there is no allegation that the petitioners sought to invoke, or that the respondent refused to follow, the grievance procedure or the arbitration clause in the collective bargaining agreement. As Mr. Justice Douglas stated for the majority:

> "*Assn. of Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437, is quite a different case. There the union sued to recover unpaid wages on behalf of some 4,000 employees. The basic question concerned the standing of the union to sue and recover on those individual employment contracts. The question here concerns the right of the union to enforce the agreement to arbitrate which it has made with the employer." (353 U. S. at p. 456.)

As the concurring opinion also stated, Section 301(a) gave the federal court jurisdiction in *Lincoln Mills* since the case "involved an obligation running to a union—a union controversy—and not uniquely personal rights of employees sought to be enforced by a union. Cf. *Association of Westinghouse Employees* v. *Westinghouse Elec. Corp.*, 348 U.S. 437" (353 U.S. at p. 460). This distinction has been recognized in numerous cases following *Westinghouse* after the *Lincoln Mills* decision. See *Silverton* v. *Valley Transit Cement Co.*, 249 F. 2d 409, 410 (C.A.9, 1957); *Textile Workers Union* v. *Bates Mfg. Co.*, 158 F. Supp. 410, 412 (D. Me., 1958); *Communications Workers* v. *Ohio Bell Telephone Co.*, 160 F. Supp. 822, 825 (N.D.Ohio, 1958), affirmed *per curiam*, 265 F. 2d 221 (C.A.6, 1959).

A companion case to *Lincoln Mills*, *Goodall-Sanford, Inc.* v. *United Textile Workers*, 353 U.S. 550, is said by peti-

tioners to present a factual situation "almost identical" to that in the present case (Pet. 9). However, that case also involved enforcement of a union's right to have grievances submitted to arbitration. The rationale of *Lincoln Mills* and its companion cases, all involving arbitration, is inapposite here. As was recognized in *Lincoln Mills*, Section 301 (a) reflected a "congressional policy to encourage and enforce labor arbitration in industries affecting commerce" (353 U.S. at p. 460). Congress was interested in promoting agreements not to strike in order to promote industrial peace, and "the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike" (353 U.S. at p. 455). Therefore "Congress adopted a policy which placed sanctions behind agreements to arbitrate grievance disputes, by implication rejecting the common-law rule * * * against enforcement of executory agreements to arbitrate" (353 U.S. at p. 456). This federal policy, like the policy of making unions responsible for contract violations, would be largely frustrated unless Section 301(a) were held applicable, for most states retain the common law rule denying enforcement of agreements to arbitrate future disputes. Moreover, since arbitration provisions can generally be invoked only by unions and not by individual employees, Section 301(a) is necessary to guarantee their enforceability in states which do not permit unions to sue. *Local 205* v. *General Electric Co.*, 233 F. 2d 85, 100-101 (C.A.1, 1956), affirmed, 353 U.S. 547. No such problems are presented in the present case, for state law poses no barrier to the enforcement of employees' claims to wages and other benefits.

When a court decrees specific performance of an arbitration agreement, the ultimate decision of the underlying dispute is left to an arbitrator who is experienced in han-

dling controversies between management and labor.[3] This is a desirable result, because it fosters the national policy of having industrial disputes peaceably settled without involving the federal judiciary in troublesome questions for which it is not traditionally suited. Cf. Bickel & Wellington, "Legislative Purpose and the Judicial Process: The Lincoln Mills Case", 71 Harv. L. Rev. 1, 22-25 (1957). The federal policy which was paramount in *Lincoln Mills* was that of promoting procedures for settling disputes without interruptions to commerce. This policy is not concerned with the final outcome of the dispute. Similarly under the Railway Labor Act, the federal courts will require parties to submit disputes to arbitration rather than resort to economic warfare, *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U.S. 30, and yet the courts will not decide the ultimate dispute over the rights of employees and employers under the collective bargaining agreement. *Slocum* v. *Delaware L. & W. R. Co.*, 339 U.S. 239; *Pennsylvania R. Co.* v. *Day*, 360 U.S. 548. In the interests of industrial peace, federal law requires parties to bargain in good faith, but this policy is not concerned with the ultimate results of that bargaining with respect to the particular terms of the collective bargaining agreement. *National Labor Relations Board* v. *American Nat'l Ins. Co.*, 343 U.S. 395, 402, 408-409. The matters at dispute in the present case do not affect the federal policy of promoting peaceful procedures for resolving disputes likely to disrupt commerce, but rather they involve monetary claims allegedly due former employees, matters with which the

3. Even though the underlying dispute in such a case may involve the rights of individual employees, the rationale of the *Westinghouse* case is inapplicable, because the court is only concerned with the union's right to arbitration; the rights of the individual employees are determined by the arbitrator. See *Item Co.* v. *New Orleans Newspaper Guild*, 256 F.2d 855, 856 (C.A.5, 1958), certiorari denied, 358 U. S. 867; *Goodall-Sanford, Inc.* v. *United Textile Workers*, 233 F.2d 104, 107-108 (C.A. 1, 1956), affirmed, 353 U. S. 550.

federal policy behind Section 301(a) and the *Lincoln Mills* decision is not concerned.

Textile Workers Union v. *Cone Mills Corp.*, 44 LRRM 2345 (C.A.4, 1959), on which petitioners rely (Pet. 11), also presented the question of the enforceability of arbitration provisions. The suit was brought to enforce an arbitrator's award, and the court of appeals observed that the only dissimilarity between the facts in the *Lincoln Mills* case and in the case before it was that in *Lincoln Mills* the employer refused to enter into arbitration while in the case before it the employer refused to abide by an award after the arbitration had been concluded. The court then reasoned that if there was jurisdiction in one case, it would seem that there should be jurisdiction in the other. For the same reasons that *Westinghouse* was distinguished in *Lincoln Mills*, the *Cone Mills* case is not in conflict with the decision below.

Though suits to compel arbitration are unquestionably different from the present suit, petitioners are wrong in asserting that the decision below holds that only agreements to arbitrate fall within Section 301(a) (Pet. 8). The petition sets out several rights which the petitioner unions had under their agreement with respondent (Pet. 5). If, for example, respondent had failed to check off union dues or to abide by the union shop, the unions as entities would have rights enforceable under Section 301(a). See *United Steelworkers* v. *Pullman-Standard Car Mfg. Co.*, 241 F. 2d 547, 551 (C.A.3, 1957). But, as has been shown, no union right is alleged to have been violated here.

Petitioners also contend (Pet. 10, 11) that the decision below is in conflict with *Textile Workers Union* v. *Arista Mills*, 193 F. 2d 529 (C.A.4, 1951) and *American Federation of Labor* v. *Western Union Telegraph Co.*, 179 F. 2d

535 (C.A.6, 1950). The former case held that the fact that a contract violation might also be an unfair labor practice did not give exclusive jurisdiction to the National Labor Relations Board and thus preclude suit under Section 301(a). In the latter decision, the court held that when a pension plan was incorporated into a collective bargaining agreement, suit on the plan could be brought under Section 301(a). Both cases were decided before the *Westinghouse* case, and therefore neither opinion discusses the question whether union rights were the basis for the suit. The inapplicability of Section 301(a) under the "personal rights" doctrine was not even raised by the employers. If on their facts these cases are inconsistent with the decision below or *Westinghouse*,[4] they have been overruled by the latter case and therefore do not present a conflict for resolution by this Court.[5] The petitioners state that both decisions were cited with approval in the *Lincoln Mills* opinion (Pet. 10-11), but this citation was only for the proposition that in cases properly brought under Section 301(a), federal

4. Actually both cases can be reconciled with *Westinghouse* on their facts because they involved union rights. In *Arista Mills*, the complaint sought "damages alleged to have been sustained *by the plaintiff union* as a result of the breach of contract." 193 F.2d at p. 531. (Emphasis supplied.) In *Western Union* the employer had taken the position that it had uncontrolled discretion to refuse a pension to any employee even though the collective bargaining agreement provided that the company could not abandon or modify the pension plan *without the union's* consent. 179 F.2d at 537. Therefore, much more was at stake than the question whether particular employees had qualified under the terms of the plan.

5. If there is any inconsistency between *American Federation of Labor* v. *Western Union Telegraph Co.*, 179 F.2d 535 (C.A. 6, 1950) and *United Steelworkers* v. *Pullman-Standard Car Mfg. Co.*, 241 F.2d 547 (C.A. 3, 1957) (Pet. 12), the "conflict" has already been resolved, for the Sixth Circuit, following the *Westinghouse* decision, has recognized and applied the "personal rights" doctrine in *Communications Workers* v. *Ohio Bell Telephone Co.*, 265 F.2d 221 (C.A. 6, 1959). The fact that the *Pullman-Standard* decision preceded the *Lincoln Mills* case (Pet. 12) does not weaken its authority, for the Court in *Pullman-Standard* carefully distinguished the factual situation presented by the *Lincoln Mills* case. See 241 F.2d at pp. 551-552.

substantive law is controlling. See 353 U.S. at p. 451, note 2. Respondent does not dispute the proposition.

2. The courts below also correctly decided the merits of the individual petitioners' claims. Respondent's discharge of all its employees was made necessary by the discontinuance of its manufacturing operations and was therefore not a violation of the collective bargaining agreement (par. 15, R. 19). An employee qualified for a pension only if his termination of service occurred after his sixty-fifth birthday (par. 3, R. 105). Termination of service occurred when his seniority was lost (par. 13, R. 108) and seniority was lost upon discharge (par. 131(a), R. 52). None of the petitioners had reached retirement age when they were discharged (R. 371). The pension plan was expressly stated not to affect the company's right to discharge its employees (par. 18, R. 110). Only persons who were employees "as of the day of the holiday" were entitled to holiday pay (par. 89, R. 37), and all the individual petitioners were discharged prior to Christmas Day, 1957 (R. 370-371). In order for an employee to qualify for vacation pay in a given year he had to perform services in that calendar year (par. 237, R. 87-88), and none of the individual petitioners performed services or was an employee in the year 1958 (R. 371-372). Accordingly, the individual petitioners' claims could not be sustained.

Petitioners contend that the decision below frustrates the policy of *Lincoln Mills* of applying federal law uniformly to the interpretation of collective bargaining agreements.

Petitioners' position is inconsistent with their reliance in the complaint on a state statute (R. 12). But petitioners now assert that the courts below erroneously applied state law whereas a different result would have followed had federal law been applied (Pet. 13-14). The petitioners have not pointed out a single decision establishing any "general federal law" contrary to the decision below. The three cases which they have cited (Pet. 14) all involved contract terms different from those involved in the present case. The interpretation of these terms was not at issue. The questions presented were ones of bankruptcy law, such as (1) whether the trustees had authority to enter into the contract (*In re Wil-Low Cafeterias, Inc.*, 111 F.2d 429 (C.A.2, 1940)); (2) whether the trustee had adopted an existing contract (*In re Public Ledger*, 161 F.2d 762 (C.A.3, 1947)); and (3) whether claims to vacation pay admittedly due were entitled to priority in bankruptcy (*United States* v. *Munro-Van Helms Co.*, 243 F.2d 10 (C.A.5, 1957)). If the proper interpretation of the contracts in these bankruptcy cases had been in question, state law would have been controlling on this issue, so that they could not stand for any propositions of federal law. 2 Remington, Bankruptcy, § 955 (1956 ed.). Moreover, in cases involving the interpretation of contracts, the choice of federal or state law is rarely significant. The basic "law" in such cases is that the intention of the parties must be ascertained and applied. This "law" is universal in state and federal courts, though different judges might reach different conclusions as to what the intention of the parties to a written contract was, just as different juries might give different verdicts on the interpretation of an oral agreement. This is totally unlike

the problems posed by the capacity of unions to sue and be sued or the enforceability of arbitration agreements where state laws vary and a uniform result is desirable.

3. The questions presented are not of sufficient importance or novelty to warrant certiorari. In order to magnify the significance of the questions raised, petitioners make the astounding misstatement that only an arbitration provision in a collective bargaining agreement "is enforceable, according to the holding of the court below." (Pet. 12). Nothing could be further from the truth, as this very case shows. We have already indicated several instances where violations of a collective bargaining agreement, not involving arbitration, could give a union the right to sue under Section 301(a) (see *supra*, pp. 3, 13). Even if an alleged breach of contract involves uniquely personal rights and therefore is not encompassed by Section 301(a), the agreement is not therefore unenforceable. Employees can sue to enforce their claims in state courts or in federal courts if jurisdictional prerequisites are satisfied, as they were in this case. The dismissal of the petitioner unions in the present suit did not prevent the lower courts from considering and passing on the merits of the claims asserted. Therefore the real nub of petitioners' quarrel with the decision below is the lower courts' interpretation of the language of particular clauses of this particular contract. It is respondent's contention that the contract was interpreted correctly, but certainly this question is not sufficiently important to warrant the attention of this Court. A decision on the basic issues in this case will have value as precedent only in the interpretation of language substantially identical to that used in paragraphs 89, 131 and 237 of this collective bargaining agreement and paragraphs 3 and 13 of this pension plan (R. 37, 52, 87, 105, 108). Though millions of employees may be covered by pension plans (Pet. 13), the various plans differ, and of course

different language involves different questions of construction. There are also millions of people in this country who drive automobiles, but suits involving automobile accidents do not generally raise appropriate questions for certiorari!

Petitioners contend that the present case involves "the basic question of a union's standing" in disputes over collective bargaining agreements in which "the resolution of a dispute as to one employee will vitally affect many others" (Pet. 14). This argument is singularly inappropriate on the facts of the present case. The contentions of the unions and all the individual petitioners are exactly the same here. This is not a case like *Parker* v. *Borock*, 156 N. E. 2d 297 (N.Y., 1959), cited by petitioners, in which the interests of the union were in conflict with those of an individual employee and thus the court had to determine the role of a union in negotiating the settlement of individual claims. Cf. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711. Nor is this a case which may establish a precedent affecting future claims of other remaining employees, since all the employees of respondent have been discharged and are participating or are represented in this litigation by the individual petitioners. Cf. Cox, "Rights Under a Labor Agreement," 69 Harv. L. Rev. 601, 608, 613. Moreover, even if the petitioner unions in the present case had interests which were distinct from those of the individual petitioners, their argument on standing is irrelevant under the circumstances here. The petitioner unions were heard as fully on the issues in this case as any party properly before the Court. They, together with the other petitioners, filed eight affidavits, took three depositions, filed interrogatories, submitted briefs on both the jurisdictional question and the merits and participated in every hearing held before the lower courts. All the petitioners were represented by the same counsel throughout. (R. 2-5.) Therefore the dismissal of the unions was essentially a formal matter which does not raise any significant issues.

Since the petitioner unions were fully heard, the supposed "constitutional question presented" exists only in the imagination of petitioners (Pet. 15). The argument that petitioner unions had a constitutional right to bring this suit in federal courts suggests that Congress was constitutionally required to enact Section 301(a), which is patently false.

Petitioners' contention that the unnamed individual plaintiffs were unconstitutionally deprived of an opportunity to be heard is also without merit and does not raise any constitutional question. The individual petitioners filed this suit in behalf of the similarly situated former employees of respondent and alleged in the complaint that they would "fairly insure the representation" of the unnamed former employees (R. 8). Now petitioners assert that these unnamed persons were deprived of their rights "without representation" (Pet. 16). The unnamed former employees were represented throughout by the individual petitioners (Pet. 10A), and thus no petitioner can claim that the judgment below resulted in any deprivation of due process.

The arguments advanced by petitioners to show the "injustice" of the decision below have no bearing on the issues of this case.[6] The contract at issue was fairly negotiated by parties of equal bargaining power. It is not suggested that any of its provisions were contrary to federal law or policy. This contract was enforced according to its terms by the court below (Pet. 10A-13A). There is no question that respondent's decision to discontinue its manufacturing

6. In an obvious attempt to prejudice this Court, petitioners have referred to the employment contracts of certain executives of respondent (Pet. 7, 17). These contracts are of course not in issue and furthermore substantial modifications were made in the principal ones when respondent ceased its manufacturing operations (R. 302, 303, 307).

operations was reached in good faith because of continuing operating losses (R. 227, 263, 264). In such circumstances, the enforcement of a contract which gives an employer the right to discharge its employees when it ceases operations does not work an injustice.

Conclusion

Since the decision below was correct and there is no actual conflict of decisions, and since the questions presented by this case are neither significant nor novel, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. 314

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

LOCAL LODGE 2040, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO.

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO.

ROBERT H. BROWN et al., Petitioners

v.

SERVEL, INC., a Corporation, Respondent

REPLY BRIEF

For Petitioners in Support of Petition for a Writ of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 364.

LOCAL LODGE 2040, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, et al.,
Petitioners,

v.

SERVEL, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY BRIEF

For Petitioners in Support of Petition for a Writ of Certiorari.

Few men can make time seem to stand still—but respondent would have time turn backward in its flight. Its brief is written as though **Westinghouse** was decided after and sharply limited **Lincoln Mills**, when the opposite is true.

Further, in a desperate attempt to fit petitioners' complaint into **Westinghouse**, instead of **Lincoln Mills** where it belongs, respondent has, like Procrustes, amputated petitioners' complaint and misstated the record.

Thus, respondent states that the primary question presented is whether federal courts have jurisdiction to entertain this action "to determine the individual rights of certain former employees to various individual employee benefits," and that "the only contested relief sought is in the form of payments to individual employees. . . ." (Br. 2, 9).

However, the record is uncontroverted that petitioners did not file their complaint only to obtain payments for individual employees, but that this complaint was filed ". . . in order to enforce . . . the rights of the Unions in said Agreement, . . ." Further, the complaint specifically prayed for a mandatory injunction ordering respondent to allow all its employees who reach the age of sixty-five during their seniority period to retire under the pension plan, and for a declaratory judgment that the collective bargaining agreement is in full force and effect (R. 8, 12).

There are many other misstatements in respondent's brief, but we would point out to the Court only two of the most important additional misstatements.

Respondent is in error when it states that "the record does not establish that Paragraph 185 of the contract was intended to apply and has been applied in the past in similar situations" (Br. 8).

The record does establish this fact, and does it without any controversy—Paragraph 22 of Robert Brown's affidavit (R. 208) so states and it is not only uncontradicted, but is confirmed by the letter of respondent's President which shows that there it had previously terminated jobs of its employees because of the sale of a manufacturing division, it followed the seniority provisions of the contract (R. 273).

Finally, respondent's statements in footnote 2 at page 9 of its brief are in error that the unions do not have a

right to appeal unsettled grievances to the court, and that the grievance procedure was not followed in this case. Respondent cites no record citation, and there are none, to support any contention that the grievance procedure was not followed in this case.

The arbitration provision of the contract for settlement of grievances, specifically provides that a grievance "**may** be submitted, **at the option of the union**, to arbitration. . . ." It is so apparent, that he who runs may read, that this clause gives the union the option of taking a grievance to arbitration, or of suing in court for breach of contract under Section 301, which the unions sought to do in the case at bar.

We would emphasize that respondent's basic argument is that the decision of substantive law to apply in labor disputes under Section 301 (a) should be a decision of an arbitrator who is "experienced in handling" such controversies, and that such decision should not be made by the unqualified federal judiciary which should not meddle "in troublesome questions for which it is not traditionally suited" (Br. 11 12).

The fact that respondent is forced to make this argument to support the decision of the court below confirms the direct conflict between that decision and the decision of this Court in **Lincoln Mills**.

In **Lincoln Mills**, this Court decided that ". . . The substantive law to apply in suits under Section 301 (a) is federal law, which **the courts** must fashion from the policy of our national labor laws" federal law (353 U. S. at 456). (Our emphasis.)

While respondent apparently has greater confidence in the ability of arbitrators than of this Court to handle "troublesome" labor questions, certainly it is no longer an open question after **Lincoln Mills** that it is the Court's responsibility so to do and that "the range of judicial in

ventiveness will be determined by the nature of the problem" (353 U. S. at 457).

We would further point out that respondent's bland assertion that "the dismissal of the unions was essentially a formal matter which does not raise any significant issues" and that the "constitutional question" presented "exists only in the imagination of petitioners" (Br. 18-19) is ridiculous.

Respondent would ignore, but it cannot erase, the long history behind "due process" which teaches that due process is often a question of procedure. Respondent ignores the fact that the decision of the district court, affirmed below, after dismissing as to the unions then entered a judgment interpreting the collective bargaining agreement which the unions had signed, contrary to their contentions (Pet. 2A). If a court can make a decision interpreting a contract which purports to be binding on one of the parties thereto, after dismissing that party from the suit, and if that party's complaint that this deprived them of due process of law is imaginary, then the due process clauses is sometimes a snare and a delusion.

Further, the judgment below purports to be binding on unnamed employees, who were not made parties to the suit and whose union was dismissed as a party, and there is no evidence nor any finding that the individual plaintiffs fairly represented them. If this deprivation of due process "exists only in the imgination of petitioners" then **Hansberry v. Lee** (1940), 311 U. S. 32, must also be only a dream.

Finally, we vigorously assert that respondent's contentions that this Court, in **Lincoln Mills**, laid down a policy which "is not concerned with the final outcome of the dispute" (Br. 12) and that petitioners' arguments "'to show the 'injustice' of the decision below have no bearing on the issues of this case . . ." (Br. 19) are shocking.

Automation may have progressed quite rapidly, but it certainly has not overtaken the Federal Judiciary. The law, as we see it, is not the mechanical application of hollow formulas. The words of the prophet Micah: "Justice, justice shalt thou pursue," are still timely.

We respectfully submit that to no petition before this Court are the wonderful words "Equal Justice Under Law" irrelevant or merely chiseled in stone, but that while this Court sits, justice shall forever be a living part of all its decisions.

Respectfully submitted,

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